

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
625 BROADWAY
ALBANY, NEW YORK 12245

In the Matter

- of -

**the Application of Laboratory Disposable Products, Inc.
for Recertification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 4797544

RECOMMENDED ORDER

-by-



Theresa Wells
Administrative Law Judge
March 19, 2024

This matter considers the written appeal by Laboratory Disposable Products, Inc., (“LDP” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for recertification as a woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On February 2, 2023, Cynthia J. Paulson-Beatty, as CEO/President, applied on behalf of Laboratory Disposable Products, Inc. for recertification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1).
2. On April 5, 2023, the Division denied the application on the following grounds: (DED Exhibit 2)
 - (a) The minority group members or women relied upon for certification have not demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by, but not limited to, contributions of money, property, equipment, or expertise. 5 NYCRR § 144.2(b)(2); and
 - (b) The minority group members or women relied upon for certification must be the highest-ranking officer(s) of the business enterprise, and, where applicable, control the board of directors or serve as a general partner. 5 NYCRR § 144.2(d)(1).
3. Laboratory Disposable Products, Inc. submitted its Request to Appeal by letter dated April 5, 2023. (APP Exhibit A).

4. A Notice to Proceed via Written Appeal was sent to the Applicant on May 9, 2023. (DED Exhibit 3).
5. The Applicant filed its written appeal submission via letter dated November 11, 2023. (APP Exhibit B).
6. The Division filed an Affidavit of Raymond Emanuel, Associate Director, dated January 4, 2024, and a brief of Lisa Berk Esq., counsel for the Division, dated January 5, 2024.

FINDINGS OF FACT

7. LDP is a distributor of quality laboratory supplies and equipment. (DED Exhibit 1).
8. Cynthia Beatty is the CEO of Laboratory Disposable Products, Inc. and has a 52% ownership interest. Her husband, Donald Beatty, is the Vice President and has a 48% ownership interest. (DED Exhibit 1; APP Exhibit B).
9. Applicant purchased LDP from Betty and Edgar Patterson (“Pattersons”). The contract of the sale, dated May 16, 2005, required LDP and/or Cynthia Beatty and/or Donald Beatty to pay the Pattersons \$ [REDACTED], at a [REDACTED]% interest rate, over the course of three years. Each payment was \$ [REDACTED] per month starting on July 1, 2005. This loan was paid in full by LDP to the Pattersons on June 1, 2008. (DED Exhibits 1 and 6; APP Exhibit B).
10. Payments to the Pattersons were drawn from LDP’s business account. (DED Exhibits 1 and 7; APP Exhibit B).
11. Cynthia Beatty and her husband Donald Beatty (“Beattys”) refinanced their home and loaned \$ [REDACTED] to LDP on May 16, 2005. (DED Exhibit 1; APP Exhibits A and B).
12. The refinancing funds were deposited into LDP’s business account. (DED Exhibit 7; APP Exhibit B).

13. Proceeds from LDP's business were also deposited into the business account. (DED Exhibit 7; APP Exhibit B).
14. Repayment of the Beattys' refinancing loan by the business had priority over other loans except for repayment of the Pattersons' loan. (DED Exhibit 6; APP Exhibit B).
15. On August 16, 2005, the Applicant was designated as President, and Donald Beatty was designated as Vice President, of LDP according to shareholder meeting minutes. (APP Exhibit B).
16. On August 19, 2005, the Applicant was designated as temporary secretary of LDP, and Cynthia Beatty and Donald Beatty were elected as directors of LDP, according to the Resolution of Laboratory Disposable Products, Inc. (DED Exhibit 6).
17. LDP purchases laboratory supplies and equipment from their supplier Corning Life Sciences and resells to buyers within a specified territory. (DED Exhibits 1 and 8).

APPLICABLE LAW

5 NYCRR §144.2(b)(2) states in relevant part as follows:

Capital contribution. Minority group members and women relied upon for certification must demonstrate a capital contribution to the business enterprise for which certification is sought proportionate to their equity interest therein.

- (i) Sources of a capital contribution. Minority group members and women may demonstrate a capital contribution by providing documentary evidence of, for example and without limitation, one or more of the following:
 1. Money;
 2. Property;
 3. Equipment; or
 4. Expertise, provided that the contribution of such expertise must be uncompensated, the expertise must be specialized and directly applicable to one or more critical aspects of the operation of the business enterprise, and

a reasonable assessment of the fair market value of the expertise must be clearly documented.

5 NYCRR §144.2(d) states in relevant part as follows:

Control. Minority group members and women relied upon for certification must have the power to control the business enterprise for which certification is sought. The division shall assess whether minority group members and women possess such control based upon the following criteria:

- (1) Control of business management. A minority group member or woman relied upon for certification must be the highest-ranking officer of the business enterprise for which certification is sought, and, where applicable, control the board of directors or serve as a general partner. Any agreements describing the management of the business enterprise shall be consistent with the foregoing.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by Laboratory Disposable Products, Inc. for certification as a WBE is not supported by substantial evidence. (*see* State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination. (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. (*See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021))

DISCUSSION

I. Ownership

The Division interprets 5 NYCRR §144.2(b)(2) to require an applicant to demonstrate that the woman-owner's contribution came from assets belonging solely to the woman-owner. It is well settled that the woman owner must be the source of the funds for the capital contribution, rather than the business, to meet the requirements of 5 NYCRR §144.2(b)(2). (See *Application of Gordon & Zoerb Electrical Contractors, Inc.*, Recommended Order dated April 30, 2020, Final Order 20-07 dated June 2, 2020); *Matter of Primae Engineering*, Recommended Order dated July 6, 2016, Final Order 16-26 dated July 7, 2016). The Division has consistently denied certification where the source of the capital contribution came from loans to the business. (See *PamTen, Inc.*, Recommended Order dated June 26, 2018, Final Order 18-38 dated July 30, 2018).

The Division has also consistently denied certification where the source of the capital contribution came from assets provided by, or jointly held with, an ineligible individual. (See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015, Final Order 17-28 dated May 2, 2017; *Matter of Bore Tech LLC v. New York State Office of Economic Development*, Recommended Order dated June 1, 2021, Final Order 21-05 dated February 7, 2022). Ownership acquired solely by virtue of marital or community property does not satisfy the requirements of 5 NYCRR §144.2(b)(2). Proceeds derived from a refinancing loan, secured by a jointly held marital home, to the business do not qualify as a capital contribution by a woman owner. (See *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017, Final Order 17-21 dated March 27, 2017).

Applicant purchased the business from Betty and Edgar Patterson. (DED Exhibits 1 and 6). The terms of the sale required LDP, and/or Cynthia Beatty and/or Donald Beatty, to pay the

Pattersons \$ [REDACTED], at a [REDACTED]% interest rate, over the course of three years. (DED Exhibit 6). These payments were paid in full by LDP to the Pattersons according to the terms. (DED Exhibits 6 and 7; APP Exhibit B). Payments to the Pattersons were made from the business account. (DED Exhibit 7; APP Exhibit B). On May 15, 2005, Cynthia and her husband Donald Beatty loaned \$ [REDACTED] to LDP with assets derived from a refinancing loan on their jointly held marital home. (DED Exhibits 1 and 6; APP Exhibits A and B). This money was deposited into LDP's business account. (DED Exhibit 1; APP Exhibits A and B).

LDP's deposits were comingled in, and payments to the Pattersons were generated from, the LDP's business account. (DED Exhibits 1 and 7; APP Exhibits A and B). The Applicant's QuickBooks transactions confirm the Pattersons were paid using LDP company funds. (DED Exhibit 7; APP Exhibit B). There is no evidence to establish that the payment of the loan was made solely by the woman relied upon for certification.

On appeal, Cynthia Beatty states she gave \$ [REDACTED] of her life savings and 401(k) that was deposited by Edgar Patterson into the business account on May 16, 2005, which earned [REDACTED]% interest, until the sale in August 2005. (APP Exhibit B). Applicant also states on appeal that she used her salary from outside employment to invest in product and inventory supply for the business. (APP Exhibit B). No documentation was included in the application to support these assertions. Additionally, this is new information that was not before the Division at the time of the denial determination, is not clarifying information and it will not be considered. (See *In Re the Application of Lida Strategic Solutions, Inc.*, Recommended Order, March 6, 2019, Final Order 19-02 dated June 5, 2019); Scherzi, LLC v. White, 197 AD3d 1466 (3rd Dept. 2021).

The Division's denial of Laboratory Disposable Products, Inc.'s application for recertification as a WBE on the basis that Laboratory Disposable Products, Inc. failed to

demonstrate that Cynthia Beatty made capital contributions to Laboratory Disposable Products, Inc. in proportion to her ownership interest, as required by 5 NYCRR § 144.2 (b)(2) is supported by substantial evidence.

II. Control

5 NYCRR §144.2(d)(1) requires that the woman relied upon for certification must be the highest-ranking officer of the business enterprise for which certification is sought, and where applicable, control the board of directors or serve as a general partner. In determining whether the woman is the highest-ranking officer, etc., the Division will review the business's by-laws, operating agreement, franchise/distribution agreements and meeting minutes. (See *KPN Management*, Recommended Order dated October 23, 2023, Final Order 23-11 dated November 27, 2023), (*ADK Water Solutions, Inc.*, Recommended Order dated June 12, 2023, Final Order 23-07 dated Aug. 10, 2023), (*Matter of LHS International, Inc.*, Recommended Order dated June 6, 2023, Final Order 23-07 dated Aug. 11, 2023), and (*Matter of S.C. Spencer Electric, Inc.*, Recommended Order dated July 29, 2021, Final Order 22-04 dated March 31, 2022).

In her application, Applicant provided meeting minutes, dated August 19, 2005, stating she was elected as temporary secretary for the meeting and that Cynthia Beatty and Donald Beatty were elected as directors of LDP. (DED Exhibit 6). No other meeting minutes were provided during the application process. Applicant did not provide a copy of LDP's by-laws. In the original application, Applicant did not provide any evidence to establish who controls the board, or what role the board plays in the daily operation of the business, and how a vote is accomplished by the board. Applicant did not provide evidence that she is the highest-ranking officer of LDP in her original application.

On appeal, Applicant provided unsigned meeting minutes dated August 16, 2005, and titled “Notice of Meeting of Shareholders,” that states Applicant became President of LDP and Donald Beatty became Vice President. (APP Exhibit B). These meeting minutes, first offered on appeal, will not be considered. (See *Lida, supra* and *Scherzi Sys., LLC, supra*.) Applicant’s argument is not seeking to clarify but rather seeking to add new information.

Applicant provided a copy of Corning Life Sciences’ North American Distributor Policy Manual. (DED Exhibits 1 and 8). Corning requires LDP to comply with the terms of the manual. (DED Exhibit 8). Given the constraints outlined in the Corning Life Sciences policy manual, Corning limits and restricts Applicant’s ability to control where LDP products are sold. (DED Exhibit 8).

The Division’s denial of Laboratory Disposable Products, Inc.’s application for recertification as a WBE on the basis that Laboratory Disposable Products, Inc. failed to demonstrate that the woman relied upon for recertification is the highest-ranking officer of the business enterprise, and/or control the board of directors is supported by substantial evidence.

CONCLUSION

Laboratory Disposable Products, Inc. did not meet its burden to demonstrate that the Division’s determination to deny its application for recertification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(b)(2) and 144.2(d)(1) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Laboratory Disposable Products, Inc.'s application for recertification as a woman-owned business enterprise should be affirmed.

In the Matter of Laboratory Disposable Products, Inc.
 DED File ID No. 4797544
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Applicant Request to Appeal	Y	Y
APP B	Applicant Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Notice to Proceed via Written Appeal	Y	Y
DED 4	Appellant's Request for Appeal Form	Y	Y
DED 5	Appellant's Written Appeal	Y	Y
DED 6	Certificate of Incorporation, Contract of Sale, Statement of Loan	Y	Y
DED 7	QuickBooks Records	Y	Y
DED 8	Corning Life Science Distributor Manual	Y	Y